



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robert D. Ross - Payment Pursuant to MSPB
Decision - Not Reviewable by GAO
File: B-230348
Date: March 25, 1988

DIGEST

Comptroller General does not have authority to review or comment upon Merit System Protection Board (MSPB) decision. Therefore, any payment made by disbursing officer pursuant to MSPB decision is not subject to review or exception by the Comptroller General.

DECISION

A Finance and Accounting Officer of the Department of the Army, Los Angeles District, Corps of Engineers, requests our decision whether he may pay out of appropriated funds an award of compensatory damages as provided for in a decision of the Merit System Protection Board (MSPB) incorporating a settlement agreement between the Corps of Engineers and a now retired employee, Robert D. Ross. We do not review final decisions of MSPB and, therefore, will not comment on the merits of that proceeding other than to note that a decision of the MSPB constitutes the legal authority upon which payment can be made.

The facts of this case are not in dispute and require no lengthy exposition. It is sufficient to say that Mr. Ross retired from the Corps of Engineers on July 7, 1987. Shortly thereafter he filed a petition with the MSPB alleging that he had been coerced into retiring. Due to several factors, the Corps of Engineers determined that a settlement of Mr. Ross' case was advisable and agreed to pay him \$4,950 as compensatory damages. The settlement agreement was incorporated into an October 15, 1987, initial decision of the MSPB, Ross v. Department of the Army, Docket No. SF07528710821. Since no appeal was filed, this decision is now final.


The disbursing officer who received a voucher for payment has requested our decision because he is unsure of the authority under which he can make a payment of compensatory

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damages. He is aware only of the Back Pay Act, 5 U.S.C. § 5596, as a basis for payment; and the Back Pay Act provides no authority for payment of compensatory damages. See John H. Kerr, 61 Comp. Gen. 578, 580 (1982).

Under section 205 of the Civil Service Reform Act of 1978, Public Law 95-454, 92 Stat. 1143 (1978), codified at 5 U.S.C. §§ 7701-7703, the MSPB was given the exclusive authority to administratively decide all matters involving an employee's appeal of an agency's adverse action. See also 5 U.S.C. § 1205. We, therefore, have taken the position that we will not review a final decision of the MSPB. Pepe Iata, B-216285, Jan. 24, 1985. See also Anthony F. Librande, B-206617, May 18, 1982. Furthermore, we have stated that the Board's decision and resulting order constitute the legal basis necessary to make the payment. Librande, B-206617, supra.

Accordingly, we decline to review or comment on the merits of this matter including the proposed payment which is not subject to exception by us.

for 
Comptroller General
of the United States